

CITY OF FAIRFIELD

RESOLUTION NO. 2017 - 103

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD AUTHORIZING
THE CITY MANAGER TO EXECUTE AMENDMENT 3 TO THE AGREEMENT FOR
ASSESSMENT AND PREDESIGN BETWEEN THE CITY OF FAIRFIELD AND KASL
CONSULTING ENGINEERS, INC., FOR THE EAST TABOR AVENUE SIDEWALK
GAP CLOSURE PROJECT**

WHEREAS, on June 7, 2016, the City of Fairfield entered into an Agreement with KASL Consulting Engineers, Inc. for design services for the Assessment and Predesign for the East Tabor Avenue Sidewalk Gap Closure Project; and

WHEREAS, on December 20, 2016, said agreement was amended to increase the compensation by \$11,713.31 and extend the completion date to July 31, 2017; and

WHEREAS, on March 7, 2017, said agreement was amended a second time to prepare a Project Study Report as part of the Caltrans requirements to obtain the Active Transportation System grant therefore increasing compensation by \$6,500.00; and

WHEREAS, additional requirements beyond the scope of work are required for KASL to comply with the Union Pacific Railroad (UPRR) Right of Entry Agreement to complete the geotechnical work for the project; and

WHEREAS, Amendment 3 to the Agreement increases the total contract amount by \$10,000.00 to comply with UPRR requirements for a new not to exceed amount of \$99,712.49.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY
RESOLVES:**

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Fairfield that certain Amendment No. 3 to the Agreement with KASL Consulting Engineers, Inc. for the assessment and preliminary design services for the East Tabor Avenue Sidewalk Gap Closure Project, for an amount not to exceed ten thousand dollars (\$10,000.00).

Section 2. The Director of Public Works is hereby authorized to implement the above-mentioned Amendment.

PASSED AND ADOPTED this 16th day of May, 2017, by the following vote:

AYES: COUNCILMEMBERS: PRICE/TIMM/BERTANI/MOY/VACCARO

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

ABSTAIN: COUNCILMEMBERS: NONE

Sam J. Pua
MAYOR

ATTEST:
Karen L. Rees
CITY CLERK
pw

AMENDMENT NO. 3

TO AGREEMENT FOR CONSULTING SERVICES BETWEEN CITY OF FAIRFIELD AND KASL CONSULTING ENGINEERS, INC. FOR THE EAST TABOR AVENUE SIDEWALK GAP CLOSURE PROJECT ASSESSMENT AND PREDESIGN

This AMENDMENT No. 3 (hereinafter "AMENDMENT") to the Agreement for the East Tabor Avenue Sidewalk Gap Closure Project Assessment and Predesign, dated June 7, 2016, is made and entered this 25th day of May, 2017, by and between the CITY OF FAIRFIELD, a municipal corporation (hereinafter "CITY"), and KASL CONSULTING ENGINEERS, INC. (hereinafter "CONSULTANT").

WITNESSETH

WHEREAS, on June 7, 2016, the parties entered into an AGREEMENT for the assessment and preliminary design of the East Tabor Avenue Sidewalk Gap Closure project (PROJECT); and

WHEREAS, on December 20, 2016, the parties agreed to modifications to the agreement resulting in AMENDMENT 1; and

WHEREAS, on March 7, 2017, the parties agreed to modifications to the agreement resulting in AMENDMENT 2; and

WHEREAS, CONSULTANT has agreed to further modifications to the AGREEMENT for additional services described in Exhibit "A".

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein set forth, the parties do hereby agree as follows:

1. Section IV of the AGREEMENT shall be amended to include the following:

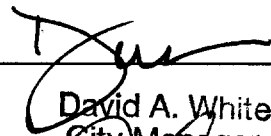
IV. COMPENSATION OF CONSULTANT

G. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed **\$99,712.49**.

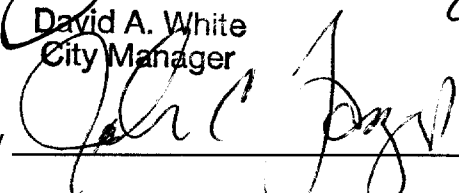
2. Exhibit "A" shall be added to the contract.
3. Except as specifically set forth herein, all terms and conditions of the AGREEMENT between the CITY and CONSULTANT, dated June 7, 2016, and AMENDMENTS 1 and 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 25th
day of May, 2017.

CITY OF FAIRFIELD
a municipal corporation (CITY)



David A. White
City Manager com

By 

KASL CONSULTING ENGINEERS, INC.
(CONSULTANT)

April 17, 2017



7777 Greenback Lane
Suite 104
Citrus Heights, CA
95610

Tel. 916/ 722-1800
Fax 916/ 722-4595

Principal:

John C. Scroggs

Mr. Peter Wright
Associate Civil Engineer
City of Fairfield, Public Works Dept.
1000 Webster Street, 3rd Floor
Fairfield, CA 94533

Subject: Right of Entry Agreement, UPRR

Peter:

The following is our revised proposal to execute the attached Right of Entry Agreement with Union Pacific Railroad to permit our geotechnical engineer, ENGEO to take two, hand augured samples, within the UPRR Right of Way. Each sample will be taken approximately 6 to 12 inches below the surface and will be collected along the alignment of the proposed sidewalk crossing of the UPRR tracks on the north side of the East Tabor Avenue. As indicated in the subject Right of Entry Agreement, execution of this agreement will require us to secure the following:

- License Fee (Article 9 of Right of Entry Agreement);
our cost..... \$1000
- UPRR Flagger; UPRR minimum for one day..... \$1000
- Increased Commercial General Liability Insurance with
a limit of not less than \$5,000,000 each occurrence
and an aggregate limit of not less than \$10,000;
See Attachment C; our cost..... \$ 2100
- Increased Business Automobile Coverage to \$2,000,000
for each accident; See Attachment C; our cost..... \$ 202
- Railroad Protective Liability Insurance with a limit of not
less than \$2,000,000 per occurrence and an aggregate
of \$6,000,000; See Attachment C; our cost..... \$ 100
- Pollution Liability Insurance with a limit of not less
than \$5,000,000 per occurrence and an aggregate
limit of \$10,000; See Attachment C; our cost..... \$ 8914

Please note that to reduce the Pollution Liability Insurance premium to a minimum, we have raised the deductible to \$25,000. This is the largest deductible that our insurance carrier will permit.

Subtotal Fees and Insurance Premiums \$ 13,316

CIVIL
WATER RESOURCES
SURVEYING

We understand that it is difficult for City staff to obtain approval for a contract amendment in excess of \$10,000. In response to this concern, we will discount the above proposed fee from \$13,316 to \$10,000.

Total Revised UPRR Right of Entry Amendment Proposal \$10,000



If this Proposal is acceptable to the City of Fairfield, we will execute the attached Agreement, secure the additional insurance coverages and license fee and arrange to have a flagger presence when samples are collected as required by the UPRR Right of Entry Agreement.

Please contact me if you have any questions or comments regarding this Proposal.

Very truly yours,

KASL Consulting Engineers

A handwritten signature in black ink, appearing to read "John C. Scroggs", is written over the printed name.

John C. Scroggs

April 17, 2017



Mr. Peter Wright
Associate Civil Engineer
City of Fairfield, Public Works Dept.
1000 Webster Street, 3rd Floor
Fairfield, CA 94533

Subject: Right of Entry Agreement, UPRR

7777 Greenback Lane

Suite 104

Citrus Heights, CA

95610

Tel. 916/ 722-1800

Fax 916/ 722-4595

Principal:

John C. Scroggs

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less than \$2,000,000 per occurrence and an aggregate
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Total Revised UPRR Right of Entry Amendment Proposal \$10,000



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Please contact me if you have any questions or comments regarding this Proposal.

Very truly yours,

KASL Consulting Engineers

A handwritten signature in black ink, appearing to read "John C. Scroggs", is written over the company name.

John C. Scroggs

CONTRACTOR'S ENDORSEMENT

Folder No. 03022-87

A. As a condition to entering upon Licensors right-of-way to perform work pursuant to this Agreement, Licensee's contractor (*Fill in*):

(hereinafter "Contractor") agrees to comply with all the terms and provisions of this Agreement relating to the work to be performed and the insurance requirements set forth in Exhibit C.

B. Before the Contractor commences any work, the Contractor will pay the Licensors a nonrefundable payment of \$500 upon execution and return of this Contractor's Endorsement, and will provide the Licensors with a certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C in a policy which contains the following type endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of Insured's performance of work on behalf of the Licensee.

All insurance correspondence shall be directed to: Valerie Harrill - Folder No. 03022-87, Union Pacific Railroad Company, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

(Please print Contractor's Name above)

X _____
Title: _____

Folder No. 03022-87

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of April 1, 2017, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"), and **KASL CONSULTING ENGINEERS**, to be addressed at 7777 Greenback Lane, Suite 104, Citrus Heights, CA 95610, (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article 2. RIGHT GRANTED; PURPOSE.

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property in the vicinity of Mile Post 51.37, Martinez Subdivision, at or near Suisun, California, for the purpose of site reconnaissance to observe areas of visible soil, pavement or concrete staining and/or stressed vegetation. Collect two soil samples within the Railroad Right of Way. Soil samples will be collected using a hand auger to a depth of approximately 6 to 12 inches below existing sub grade. **Dig will occur no closer than 25' of the tracks and will require flagging.** The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein in the location shown on the print marked Exhibit A, attached hereto and hereby made a part hereof, or designated by the Railroad Representative named in Article 4.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in Exhibits B and C, hereto attached, are hereby made a part of this Agreement.

**Article 4. ALL EXPENSES TO BE BORNE BY LICENSEE;
RAILROAD REPRESENTATIVE.**

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the

representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative):

JUSTIN D. ROGERS
MGR TRACK MNTCE
33 BRIDGEHEAD RD
MARTINEZ, CA 94553
Work # 402-233-1746
Cell # 402-676-9562
Email: jdrogers@up.com

Jason P. Coveau
MGR SIGNAL MNTCE
9451 Atkinson Street
Roseville, CA 95747
Work Phone: 916-789-5315
Cell Phone: 916-458-2215
Email: jpcoveau@up.com

Article 5. TERM; TERMINATION.

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and **continue until April 30, 2017**, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

Article 6. CERTIFICATE OF INSURANCE.

A. Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C of this Agreement.

B. Union Pacific should be listed as certificate holder and all insurance correspondence shall be directed to: Union Pacific Railroad Company, Director (Attn.: Valerie Harrill - Folder No.03022-87), 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

Article 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Fiber optic cable systems may be buried on Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to beginning any work, the Licensee shall telephone the Railroad at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit B.

Article 8. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Nebraska and Nebraska only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

Article 9. LICENSE FEE.

Licensee shall pay, and Railroad shall accept, upon the execution and return of this instrument, the nonrefundable sum of **One Thousand Dollars (\$1,000.00)** to cover Railroad's cost to prepare and administer this Agreement.

Flagging charges are not included in the sum recited in the preceding paragraph, and will be billed separately, if incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
Federal Taxpayer I.D. #94-6001323

KASL CONSULTING ENGINEERS

By: _____
Valerie Harrill
Manager - Contracts

By: _____
Title: _____

(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)

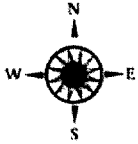
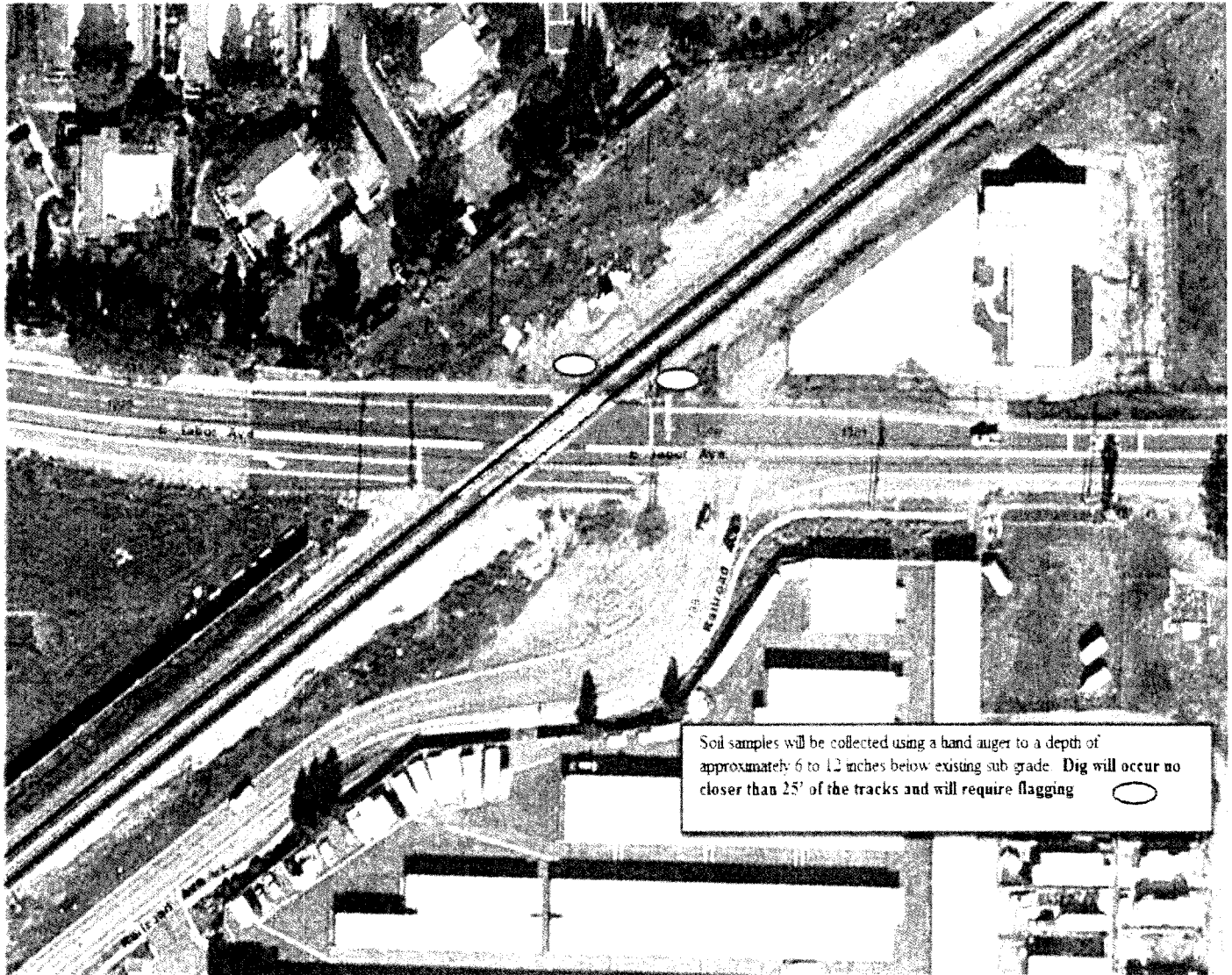


EXHIBIT "A"



WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY
Martinez SUBDIVISION

Licensee: KASI Consulting Engineers

RAILROAD MILE POST 51.37

Fairfield (Suisun), Solano County, California

Folder No. 3022-87 Date: 11/21/2016

EXHIBIT B

Section 1 - NOTICE OF COMMENCEMENT OF WORK – FLAGGING.

The Licensee agrees to notify the Railroad Representative at least Ten (10) days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2 - LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

Section 4 - PERMITS.

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

Section 5 - MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such

work performed. The Licensee shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 6 - FIBER OPTIC CABLE SYSTEMS.

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 7 - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 8 - SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 9 - INDEMNITY.

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 10 - RESTORATION OF PROPERTY.

Rev 090506

EXHIBIT C

Union Pacific Railroad Contract Insurance Requirements

Right of Entry Agreement

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26, (or substitute form(s) providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSEE AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed..

I. Licensee waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

J. Prior to commencing the work, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

L. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.